

April 16, 2002

William F. Caton
Acting Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte* Comments – Telecommunications Carriers' Use of Customer
Proprietary Network Information and Other Customer Information CC Docket
Nos. 96-115 and 96-149

Dear Mr. Caton:

The Texas Office of Public Utility Counsel ("Texas OPC") wishes to file the enclosed *ex parte* comments in the above-cited docket, relating to telecommunications' carriers use of customer proprietary network information ("CPNI").

Respectfully yours,

Suzi Ray McClellan
Public Counsel
State Bar No. 16607620

Sara J. Ferris
Assistant Public Counsel
State Bar No. 50511915

1701 N. Congress Avenue, Suite 9-180
P.O. Box 12397
Austin, Texas 78711-2397
512/936-7500 (Telephone)
512/936-7520 (Fax)

ATTORNEYS FOR THE
OFFICE OF PUBLIC UTILITY COUNSEL

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the)	
Telecommunications Act of 1996)	CC Docket No. 96-115
)	
Telecommunications Carriers' Use of)	
Customer Proprietary Network Information)	
And Other Customer Information)	
)	
Implementation of the Non-Accounting)	
Safeguards of Sections 271 and 272 of)	CC Docket No. 96-149
The Communications Act of 1934, as)	
Amended)	

**EX PARTE COMMENTS OF
THE TEXAS OFFICE OF PUBLIC UTILITY COUNSEL**

April 16, 2002

The Texas Office of Public Utility Counsel ("Texas OPC") respectfully submits these *ex parte* comments to emphasize to the Federal Communications Commission ("Commission") the severity of the problems faced by consumers who wish to protect their customer proprietary network information ("CPNI") from disclosure to third parties. Texas OPC files these *ex parte* comments because we have developed a deep concern for Texas consumers' privacy as a result of the manner in which companies have designed and implemented their CPNI programs. Texas OPC supports the comments of the Attorneys General of 39 states ("State Comments") as well as the April 5, 2002 *ex parte* comments of the National Association of Consumer Advocates ("NASUCA") and urges the Commission to re-adopt its opt-in rule.

Consumers across the country, including Texas consumers, have now been subjected to opt-out procedures that violate the minimal standards for informed consent. The opt-out method, heavily relied upon by carriers, benefits their pecuniary interests at the expense of consumers' privacy interests. This lop-sided cost-benefit effect should be ceased and the Commission's opt-in rule readopted.

The content of the opt-out notices recently issued by Qwest Communications, Inc., SBC-Ameritech, and Verizon Communications, Inc. were insufficient to provide adequate notice to consumers of the consumers' privacy rights. As noted by NASUCA, the negligible response rate by consumers to these notices is itself telling evidence of the failure of opt-out to protect consumer privacy. Texas OPC finds just as disturbing the roadblocks encountered by consumers who tried to opt-out, and the absence of any method to verify that the consumer had effectively opted out.

In addition to the roadblocks faced by those consumers who attempted to opt-out, the CPNI notices given by many companies presented substantial hurdles that prevented many consumers from even understanding what was being addressed. As pointed out in the State Comments, 15 U.S.C. § 6802(b)(1)(A) requires that CPNI notices be written in a "clear and conspicuous" manner, yet many experts have noted that often, CPNI notices are written at a college reading level instead of at a junior high school level that is understood by the general public.

The State Comments also referred to consumer surveys that reported that a majority of consumers did not read their CPNI notices. Under one such survey, consumers indicated that one of the main reasons that consumers did not read the notices was a difficulty in understanding or reading the notice language. Lack of time or interest were also listed as top reasons for not reading the CPNI notices. Texas OPC agrees wholeheartedly with the State Comments that

“[w]here the vast majority of consumers don’t even read opt-out notices, it cannot be said that they ‘approve’ the sharing or selling of their personal nonpublic information.” State Comments, at 9. For this reason, the Commission should readopt its opt-in rule.

Texas OPC is also concerned with the possibility that the restrictions on carriers regarding the sharing of private information might not be interpreted by some as applying to the companies with whom they share information. Namely, once the information has been shared with an affiliated company, is *that* company under any restrictions as to whom *they* can “share” the private information with? Texas OPC is concerned that because of this ambiguity, private customer information can be passed into a third set of hands, or more, without consumers knowledge or approval. For the reasons stated above, this risk is especially disturbing under the opt-out approach.

As stated by NASUCA in its *ex parte* comments, “[t]he use to which CPNI can be put and the resulting harm to the consumer is limited only by the imagination of those with an interest in selling it to the highest bidder.” Requiring *prior* customer approval is the only way to be sure that the customer has given explicit and knowing consent to have such information disclosed to third parties. Consumer inaction is not equal to customer approval or informed consent, and opt-out fails to protect the public interest in this regard and cannot satisfy 47 U.S.C. § 222(c)(1) which requires customer approval before CPNI can be used or disclosed.

If the Commission adopts the opt-out method, the Texas OPC alternatively recommends that the Commission take one of two actions:

- a) Adopt detailed rules specifying the form, content and method of the CPNI notice as well as the methods of response that companies are required to make available to customers who do wish to opt-out; or

b) Require companies to obtain prior state commission approval of the CPNI notices.

Even though neither of these alternative protections cure the inherent problem with the opt-out method, i.e. it does not secure customer approval, such protections may provide some help to the consumer by increasing both the comprehensibility of the language used and the likelihood of the notice actually catching consumers' eyes.

Finally, regardless of which method the Commission adopts, Texas OPC agrees with NASUCA's recommendation, found on page ten of its *ex parte* comments, that the Commission should explicitly permit states to adopt CPNI notice requirements that "go beyond those adopted by the Commission."

In conclusion, Texas OPC urges the Commission to require carriers to seek and obtain actual customer approval through the use of the opt-in approach before allowing companies to "share" personal data. As the representative of Texas residential and small commercial consumers, Texas OPC thanks you for your consideration of our views and concerns.